

American Battle Monuments Commission

§ 404.1

the memorial by the Commission, using funds provided by the sponsors, in which case user charges will be made in accordance with general Government policy.

[35 FR 19666, Dec. 29, 1970]

PART 402—ERECTION OF WAR MEMORIALS IN FOREIGN COUNTRIES BY AMERICAN CITIZENS, STATES, MUNICIPALITIES, OR ASSOCIATIONS

AUTHORITY: Sec. 3, 70 Stat. 640, 641; 5 U.S.C. 132 note, 36 U.S.C. 123, 125; E.O. 6614, E.O. 9704, 11 FR 2675, 3 CFR 1943-1948 Comp., p. 519, E.O. 10057, 10087, 14 FR 2585, 7287, 3 CFR, 1949-1953 Comp., pp. 269, 285.

§ 402.1 Restrictions on erection.

(a) No administrative agency of the United States shall give assistance to American citizens, States, municipalities, or associations in erecting any war memorial outside the continental United States unless the plan has been approved in accordance with § 401.1 above.

(b) It is the opinion of the Commission that no battlefield memorial should be erected to any unit smaller than a division or comparable unit or to an individual, unless the services of such unit or individual clearly were of such distinguished character as to warrant a separate memorial.

(c) It is the opinion of the Commission that, as a general rule, memorials should be erected to organizations rather than to troops from a particular locality of the United States.

(d) The policy of the Commission is to approve plans for memorials in foreign countries only in cases in which the sponsors make adequate and permanent arrangements for their maintenance. If the sponsors so desire, the Commission will maintain such memorials, including those previously existing which it deems worthy of preservation, using funds provided by the sponsors; in such cases it will make user charges in accordance with general Government policy.

[35 FR 19666, Dec. 29, 1970]

PART 403—ERECTION OF MEMORIAL MONUMENTS, BUILDINGS, AND HEADSTONES IN AMERICAN CEMETERIES LOCATED OUTSIDE THE UNITED STATES AND ITS TERRITORIES AND POSSESSIONS

AUTHORITY: Sec. 3, 70 Stat. 641; 36 U.S.C. 123; E.O. 6614, Feb. 26, 1934; E.O. 9704, 3 CFR, 1943-1948 Comp., 519; E.O. 10057, 10087, 3 CFR 1949-1953 Comp., pp. 269, 285.

§ 403.1 Restrictions on erection.

(a) No memorial monuments or buildings shall be placed in these cemeteries unless the design and site have been approved by the American Battle Monuments Commission. No steps toward the erection of any memorial monument or building in these cemeteries should be taken until the idea has first been approved by the American Battle Monuments Commission.

(b) There shall be no variation in the types of headstones officially adopted for use in American cemeteries located outside the United States and its Territories and possessions.

[13 FR 6812, Nov. 19, 1948, as amended at 23 FR 9780, Dec. 19, 1958]

PART 404—PROCEDURES AND GUIDELINES FOR COMPLIANCE WITH THE FREEDOM OF INFORMATION ACT

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AUTHORITY: 5 U.S.C. 552.

SOURCE: 53 FR 120, Jan. 5, 1988, unless otherwise noted.

§ 404.1 Purpose.

These guidelines prescribe procedures to obtain information and records of the American Battle Monuments Commission under the Freedom of Information Act of 1986, 5 U.S.C. 552(a)(4)(A)(i).

§ 404.2

This act requires each agency to promulgate regulations that specify the schedule of fees for processing FOIA requests and the guidelines when fees may be waived. It applies only to records and information of the Commission which are in the Commission's custody.

§ 404.2 General policy.

Public requests for information from the records of the American Battle Monuments Commission should be sent to the Freedom of Information Representative, American Battle Monuments Commission, Room 5127, Casimir Pulaski Building, 20 Massachusetts Ave., NW., Washington, DC 20314. They may also be sent to its field offices at the addresses listed below:

(a) Officer-in-Charge, European Office, American Battle Monuments Commission, APO New York 09777.

(b) Officer-in-Charge, Mediterranean Office, American Battle Monuments Commission, APO New York 09794.

(c) Superintendent, Manila American Cemetery, FPO San Francisco 96528.

(d) Superintendent, Corozal American Cemetery, The American Battle Monuments Commission, Attn: AFZU-AG-CRB, Drawer #38, APO Miami, FL 34004-5000.

(e) Superintendent, Mexico City National Cemetery, American Battle Monuments Commission, c/o U.S. Embassy, Mexico, P.O. Box 3087, Laredo, TX 78044-3087.

§ 404.3 Response to requests.

(a) Except for records and information exempted from disclosure by 5 U.S.C. 552(a)(1), all records of the Commission or in its custody are available to any person who requests them.

(b) Requests for information from the public will be honored within ten working days unless the confidentiality of such information is protected by law, or when it is necessary to search and/or collect records in separate offices or another office of the Commission, which would usually require more than ten working days.

(c) Whenever information cannot be dispatched within ten work days after receipt of request, an interim reply will be sent informing the requester of the status of the request.

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(d) The records of the ABMC may be examined and copied between the hours of 8:00 a.m. and 3:30 p.m., Monday through Friday under the supervision of the Freedom of Information representative.

§ 404.4 Denial of access.

(a) Letters denying confidential information will be dispatched within ten working days of receipt of the request and will be signed by one of the below listed personnel:

(1) Officer-in-Charge, ABMC European Office.

(2) Officer-in-Charge, ABMC Mediterranean Office.

(3) Directors, ABMC Washington Office.

(4) Secretary, ABMC.

(b) Letters denying access to information will:

(1) Provide the requester with the reason for denial.

(2) Inform the requester of his or her right to appeal the denial within 30 days.

(3) Give the name of the official to whom the appeal may be sent.

(c) If an unusual circumstance delays a decision concerning access to information, the requester will be informed of the delay within ten working days of the request's initial receipt. In no case will the decision be delayed more than 20 working days from initial receipt of the request.

(d) A copy of each denial of information will be furnished to the Secretary, ABMC at the time of its dispatch.

§ 404.5 Appeals.

(a) The Secretary is the appellate authority for all denials except those which he authors. The Chairman is the appellate authority for denials authored by the Secretary.

(b) The requester will be informed of the decision on his or her appeal within 20 working days after its receipt. If the denial is upheld, the requester will be advised that there are provisions for judicial review of such decisions under the Freedom of Information Act.

(c) In the event a court finds that the American Battle Monuments Commission has arbitrarily and capriciously withheld information from the public and a subsequent Office of Personnel

Management investigation finds agency personnel responsible, these personnel will be subject to disciplinary action by the American Battle Monuments Commission.

§ 404.6 Fees to be charged.

While most information will be furnished promptly at no cost as a service to the general public, fees will be charged if the cost of search and duplication warrants. In those instances where ABMC deems it necessary to charge a fee, ABMC shall use the most efficient and least costly methods to comply with requests for documents, drawings, photographs, and any other materials made available under the FOIA. The Freedom of Information Representative shall charge the fees stated in paragraphs (a) through (g) of this section. The Freedom of Information Representative shall, however, waive the fees in the circumstances stated in § 404.9. The specific fees which ABMC shall charge the requester when so required by the FOIA are as follows:

(a) *Manual searches of records.* \$9.00 per hour for clerical personnel; \$15.00 per hour for supervisory personnel.

(b) *Computer searches for records.* Fees for searches of computerized records shall be the actual cost to the Commission but shall not exceed \$12.00 per hour. This fee includes machine time and that of the operator and clerical personnel. The fee for computer printouts shall be \$.40 per page. The word "page" refers to paper copies of standard computer size, which normally are 11 x 15 inches.

(c) *Copying fee.* The machine copy fee for each page up to 8½ x 14 shall be \$.25 per page. Copying fees shall not be charged for the first 100 pages of copies unless the copies are requested for commercial purposes.

(d) \$2.00 for each 8 x 10 inch black and white photograph.

(e) \$3.00 for each 8 x 10 inch color photograph.

(f) \$1.75 per cemetery booklet.

(g) \$1.50 per lithograph.

§ 404.7 Assessment and collection of fees.

(a) *Assessment of fees.* (1) ABMC shall assess interest charges on an unpaid bill starting on the 31st day following

the day on which the billing was dispatched. Once the fee has been received by ABMC, even if not processed, accrual of interest will cease. Interest will be at the rate prescribed in section 3717 of title 31 U.S.C. and will accrue from the date billing is sent.

(2) *Charges for unsuccessful searches.* If ABMC estimates that charges for an unsuccessful search may exceed \$10.00, it shall so inform the requester unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. Such notice shall offer the requester the opportunity to confer with agency personnel with the object of reformulating the request to meet the requester's needs at a lower cost. Dispatch of such a notice shall temporarily suspend the ten day period for response by ABMC until a reply is received from the requester.

(3) *Aggregating requests.* Except for requests that are for a commercial use, ABMC shall not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When ABMC believes that a group of requesters are acting in concert and attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, ABMC shall aggregate any such requests and charge accordingly. One element to be considered is the time period in which the requests have been made. Before aggregating requests from more than one requester, ABMC must be reasonably certain that the requesters are acting specifically to avoid payment of fees. In no case shall ABMC aggregate multiple requests on unrelated subjects from one requester.

(4) *Advance payments.* ABMC shall not require payment for fees before work has commenced or continued on a request unless:

(i) ABMC estimates that the charges may exceed \$25.00. In such an event, ABMC shall notify the requester of the estimated cost and may require an advance payment of an amount up to the full amount of estimated charges; or

(ii) A requester has previously failed to pay a fee within 30 days of the date

of billing. In this event, ABMC shall require the requester to pay the full amount owed plus any applicable interest and make an advance payment of the full amount of the estimated fee before ABMC begins to process a new request or a pending request from that requester.

(iii) When ABMC acts under paragraph (a)(4)(i) or (ii) of this section, the administrative time limits prescribed in § 404.3 will begin only after ABMC has received fee payments described above.

(5) *Form of payment.* Remittances shall be in the form of a personal check or bank draft drawn on any bank in the United States, a postal money order, or cash. Remittances shall be made payable to the American Battle Monuments Commission.

(6) ABMC will not defray cost sending records by special methods such as express mail or for transportation of personnel.

(b) *Restrictions on assessing fees.* With the exception of requesters seeking documents for commercial use, section (a)(4)(A)(iv) of the Freedom of Information Act, as amended, requires ABMC to provide the first 100 pages of duplication and the first two hours of search time without charge. ABMC shall not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. ABMC will not begin to assess fees until it has first provided the free search and reproduction authorized.

§ 404.8 Categories of requesters.

There are four categories of FOIA requesters: Commercial; educational and noncommercial scientific institutions; representatives of the news media; and all others. The fees to be charges each of these categories of requesters are as follows:

(a) *Commercial.* When ABMC receives a request for documents for commercial use, it shall assess charges that recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial requesters are not entitled to two hours of free search time or 100 free pages of reproduction. ABMC shall recover the cost of searching for the

records even if ultimately there is no disclosure of records. Requesters must provide a reasonable description of the records sought.

(b) *Educational and non-commercial scientific institutions.* ABMC shall provide documents to educational and non-commercial scientific institutions for the cost of reproduction alone, except there will be no charge for the first 100 pages of duplication. To be eligible for inclusion in this category, requesters must show that the request is authorized by and under the auspices of a qualifying institution and that the records are not being sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must provide a reasonable description of the records being sought;

(c) *Representatives of the news media.* ABMC shall provide documents to requesters who are representatives of the news media for the cost of reproduction alone, except there will be no charge for the first 100 pages. A request for records supporting the news-dissemination function of the requester shall not be considered commercial use. Requesters must provide a reasonable description of the records sought;

(d) *All other requesters.* ABMC shall charge requesters who do not fit into any of the above categories fees that recover the full reasonable costs of direct search and reproduction records responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Requesters must provide reasonable description of the records sought.

§ 404.9 Waiver of fees.

The Freedom of Information Representative shall waive all fees assessed under 404, if the following two conditions are satisfied: Disclosure of the information is in the public interest as it is likely to contribute significantly to public understanding of the operations or activities of the government; and disclosure is not primarily in the commercial interest of the requester. The Freedom of Information

Representative shall afford the requester the opportunity to show that he satisfies these two conditions. Under the above standards should ABMC refuse to waive a request for information and the requester petition for a waiver, the senior Freedom of Information Representative will make the determination.

§ 404.10 Maintenance of statistics.

(a) The Freedom of Information Representative shall maintain record of:

(1) The total amount of fees collected by ABMC under this part;

(2) The number of denials of requests for records or information made under this part and the reason for each;

(3) The number of appeals from such denials, together with the results of such appeals, and the reasons for the action upon each appeal that results in a denial of information or documents;

(4) The name and title or position of each person responsible for each denial of records and the number of instances of each;

(5) The results of each proceeding conducted under 5 U.S.C. 552(a)(4)(F), including a report of the disciplinary action against the official or employee primarily responsible for improperly withholding records, or an explanation of why disciplinary action was not taken;

(6) A copy of every rule made by this agency affecting or implementing 5 U.S.C. 552;

(7) A copy of the fee schedule for copies of records and documents requested under this part; and

(8) All other information that indicates efforts to administer fully the letter and spirit of the Freedom of Information Act and the above rules.

(b) The Freedom of Information Act Representative shall annually, within 60 days following the close of each calendar year, prepare a report covering each of the categories of records to be maintained in accordance with the foregoing and submit the same to the Speaker of the House of Representatives and the President of the Senate for referral to the appropriate committees of the Congress.

PART 405—SCHEDULE OF FEES FOR SEARCH AND DUPLICATION OF RECORDS

Sec.

405.1 General.

405.2 Schedule.

AUTHORITY: 5 U.S.C. 552, as amended.

§ 405.1 General.

(a) While most information will be furnished promptly at no cost as a service to the general public, fees will be charged if the cost of search and duplication warrants.

(b) When a fee is to be charged, the individual requesting the information will be informed of the fee, and no work will be performed until he or she has agreed to pay it.

[40 FR 7304, Feb. 19, 1975]

§ 405.2 Schedule.

Fees which may be charged by this Commission for search and duplication of records are as follows:

(a) *Duplication fees:* (1) \$2.00 for first 6 pages, 5¢ per page thereafter for photocopying.

(2) \$1.50 per 8×10 inch black and white print of photographs.

(3) \$2.50 per 8×10 inch color print of photographs.

(b) *Search fees:* (1) \$8.00 per hour to search records for specific documents.

(2) \$215.00 for selective extracts from Commission computer tapes.

(3) Transportation costs of personnel and records arising from searches for requested information.

[40 FR 7304, Feb. 19, 1975]

PART 406—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY AMERICAN BATTLE MONUMENTS COMMISSION

Sec.

406.101 Purpose.

406.102 Application.

406.103 Definitions.

406.104—406.109 [Reserved]

406.110 Self-evaluation.

406.111 Notice.

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